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in opinion

October 3, 1955

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John Jacobson, Jr., Brig. General MING
The Adjutant General
Concord, New Hampshire

SEP 22 1998

CONCORD, N.H.

Dear General Jacobson:

You have inquired whether under Laws 1955, chapter 286, Reserve Officers still on active duty are entitled to a bonus provided they are otherwise eligible with respect to period of service in Korea. I respectfully reply in the negative.

The legislative language establishing eligibility appears in Laws 1955, chapter 286, section 1, which after setting forth a minimum period of ninety days' service in the armed forces from June 25, 1950 to July 27, 1953, further requires that such person, man or woman, to be eligible, shall have been ". . . discharged, released or has a certificate of service therefrom under conditions other than dishonorable. . ."

Clearly, officers still on active duty have not been discharged nor have they been released, so that the only remaining question is whether the phrase "or has a certificate of service therefrom under conditions other than dishonorable" confers eligibility. Inquiry by this office of appropriate components of the armed forces indicates that present procedures do not contemplate certificates of service to officers remaining on active duty. This appears also to have been true in the past and was the situation when this legislation was considered by the New Hampshire General Court. The present certificate of service in the Army, the Navy, and the Air Force, appears as Form DD 217 - A. It is issued only when an individual has been separated from active duty.

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For the foregoing reasons it does not become necessary to consider whether legislative policy as expressed in chapter 286 contemplated payments to individuals resuming civilian status. Compelling reasons might be set forth that this was the case. In any event, a contrary decision by this office would release thousands of dollars of state funds to many separate individuals without clear legislative authority in support of such a decision. The Legislative Session of 1957 will be with us in less than fifteen months so that clarification of this point in the event the legislative intent was not as interpreted in this opinion may then be effected.

For your further information, the Special Regulations of the Department of the Army, Dictionary of U. S. Army terms, SR 320-5-1, defines a certificate of service as "a certificate stating that a person has honorably completed the required period of active military service or has been honorably separated or relieved from active military service prior to its completion. It also notes any special merit attained."

I am satisfied that it is reasonably certain from the foregoing interpretation that the Legislature did not intend bonuses to be paid those who continue in active service. So far as I know, mustering out pay in the federal government has never likewise been paid to individuals who never were mustered out.

Respectfully,

Louis C. Wyman
Attorney General

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